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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/398,555	03/03/1995	LINDA G. CIMA	MIT6210	7254
23579	7590	01/28/2004	EXAMINER RUSSEL, JEFFREY E	
PATREA L. PABST HOLLAND & KNIGHT LLP SUITE 2000, ONE ATLANTIC CENTER 1201 WEST PEACHTREE STREET, N.E. ATLANTA, GA 30309-3400			ART UNIT 1654	PAPER NUMBER
DATE MAILED: 01/28/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

08/398,555

Applicant(s)

CIMA ET AL.

Examiner

Jeffrey E. Russel

Art Unit

1654

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 14-17 and 32-34.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_.

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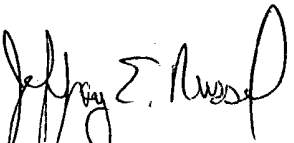
1. The proposed amendment after final rejection filed January 5, 2004 will not be entered because at proposed claim 14, line 3, and proposed claim 32, line 3, "maleimide" is now misspelled, and because at claim 33, page 3, line 2, "effector" was changed to "factor". If the proposed amendment is re-submitted without these changes the proposed amendment will be entered. However, the obviousness-type double patenting rejections and the obviousness rejections will still be maintained for the reasons of record.
2. The obviousness rejections will be maintained. Merrill '264 discloses polyethylene oxide star molecules which can be simultaneously covalently linked to a substrate and to a bioactive molecule and which can be used to coat biomedical devices to be used in vivo to prevent thrombosis at the locations of the device. Herweck et al disclose biomedical devices to be used in vivo. Because it is desirable in the art to prevent thrombosis, it would be desirable to coat the biomedical device of Herweck et al with the polyethylene oxide of Herweck et al. Herweck et al teach an enhanced rate of growth, i.e. growth of cells at the implantation site is enhanced compared to if no implantation had been made. Tethering of the bioactive materials of Herweck et al through the polyethylene oxide of Merrill '264 would still result in the bioactive materials being present at the implantation site, and therefore an enhanced rate of growth would have been expected to be maintained.

The obviousness-type double patenting rejections will be maintained. Only one-way obviousness needs to be demonstrated in order to support the rejection. See MPEP 804(II)(B)(1)(b) and its discussion of *In re Berg*, 46 USPQ2d 1226 (Fed. Cir. 1998). See also the Office action mailed October 29, 2002, pages 6-7.

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3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey E. Russel at telephone number (571) 272-0969. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Brenda Brumback can be reached at (571) 272-0961. The fax number for Technology Center 1600 for formal communications is (703) 872-9306; for informal communications such as proposed amendments, the fax number (571) 273-0969 can be used. The telephone number for the Technology Center 1600 receptionist is (703) 308-0196.



Jeffrey E. Russel

Primary Patent Examiner

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JRussel

January 12, 2004